UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,854	12/30/2003	Janko Budzisch	6570P055	9420

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EXAMINER
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ART UNIT	PAPER NUMBER
2155	

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>01 August 2006</u>.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,10-18,20-28 and 30* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10-18,20-28 and 30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

RESPONSE TO AMENDMENT

1.   This Office Action is in response to the amendment filed 08/01/2006.

Claims 1, 11 and 21 were amended. Claims 9, 19 and 29 were cancelled. Accordingly,

claims 1-8, 10-18, 20-28 and 30 are currently pending and have been examined in this

Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

·(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

2.   Claims 1-3, 11-13, and 21-23 are rejected under 35 U.S.C. 102(e) as

being anticipated by the U. S. Patent No. 6,522,995, issued to Conti et al., hereinafter

Conti.

Regarding claim 1, Conti teaches a method, comprising: repeatedly receiving

request messages, each of said request messages identifying the same one or more

software components associated with the same testing scenario, each of said one or

more software components used by a business logic process within an IS infrastructure

(Col. 2, lines 1-3 - load emulation; lines 15-19 - repeated requests by the user); and, in

response to each of said request messages in executing said testing scenario: testing

each of said one or more software components for availability and preparing and

sending a response message that indicates availability or unavailability for each of said

one or more software components (Col. 2, lines 19-25 - transaction availability; lines 26-

30 - providing feed-back information) wherein at least one of said software components

requires a login procedure for its availability test and each of said request messages

include a userid for said login procedure (Col. 4, lines 41-43 and lines 50-52 -

registration of users, assigning of user IDs).

Regarding claim 2, Conti teaches the method of claim 1 wherein at least one of

said software components further comprises a web page and said testing for availability

of said web page further comprises attempting to fetch said web page (Col. 3, lines 7-15

- receiving webpage data).

Regarding claim 3, Conti teaches the method of claim 1 wherein said web page's

URL is identified in each of said request messages (Col. 3, lines 7-15 - receiving

webpage data, which according to lines 24-29 is done using HTTP protocol, inherently

using URL).

Claim 11-13 are rejected in view of the above rejection of claims 1-3. Claims 11-

13 are essentially the same as claims 1-3, except that they set forth the invention as a

machine readable medium rather than a method, as do claims 1-3.

Claim 21-23 are rejected in view of the above rejection of claims 1-3. Claims 21-

23 are essentially the same as claims 1-3, except that they set forth the invention as a

computing system rather than a method, as do claims 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 4-8, 10, 14-18, 20, 24-28 and 30 are rejected under 35 U.S.C.

103(a) as being unpatentable over Conti in view of the U. S. Patent No. 6,973,627,

issued to Appling, hereinafter Appling.

Regarding claim 4, Conti teaches the method of claim 1.

Conti does not explicitly teach or define a method further comprising creating a

request object from the content of said request message with a request message class.

However, Appling in analogous art, directed to emulating a look and feel of an

application program by configuring a graphical display of a website, teaches

implementation of his invention in Javascript, XML and Java, latter being inherently an

object oriented language, and therefore teaches a method further comprising creating a

request object from the content of said request message with a request message class

(Appling, col. 2, lines 57-61).

Therefore, it would have been obvious to one having ordinary skills in the art at

the time the invention was made to incorporate the teachings of Appling regarding

Javascript, XML and Java, into the teachings of Conti in order to enhance the

capabilities of Conti's testing methods by making his invention platform independent and

by taking advantage of additional features XML and Javascript have to offer compared

to HTML. Modified in this manner Conti is hereinafter referred to as modified Conti.

Regarding claim 5, modified Conti teaches the method of claim 4 further comprising creating a scenario object from said request object with a scenario object class (Appling, col. 2, lines 57-61 - Java).

Regarding claim 6, modified Conti teaches the method of claim 5 further comprising creating a response message object with a response message class (Appling, col. 2, lines 57-61 - Java inherently implements groups of objects as classes).

Regarding claim 7, modified Conti teaches the method of claim 1 wherein said response message is an XML document (Appling, col. 2, lines 57-61 - XML).

Regarding claim 8, modified Conti teaches the method of claim 7 wherein each of said request messages is an XML document (Appling, col. 2, lines 57-61 - XML).

Regarding claim 10, modified Conti teaches the method of claim 1 wherein said testing of each of said one or more software components is performed by a servlet (Appling, col. 2, lines 57-61 - Java).

Claim 14-18 and 20 are rejected in view of the above rejection of claims 4-8 and 10. Claims 14-18 and 20 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a machine readable medium rather than a method, as do claims 4-8 and 10.

Claim 24-28 and 30 are rejected in view of the above rejection of claims 4-8 and 10. Claims 24-28 and 30 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a computing system rather than a method, as do claims 4-8 and 10.

4.   **Examiner's note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the Applicants. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the Applicants in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Response to Arguments

5.   Applicants' arguments filed 04/29/2005 have been fully considered but

they are not persuasive.

The Applicants argue – *"Applicants respectfully submit that the present set*

of claims are allowable over Conti. In particular, with respect to amended claim 1,

Conti does not disclose that "at least one of said software components requires a

login procedure for its availability test and each of said request messages include

a userid for said login procedure."

The Examiner respectfully disagrees and submits that even though the user IDs

and login procedures are used for tracking "virtual users" among other things, they are

also used to retrieve the test configuration for a particular user, a procedure required to

conduct an availability test, and as such meet the amended limitation of claims 1, 11

and 21 (Col. 4, lines 60-62). Conti's disclosures in at least subsequent columns 5 and 6

further disclose why the login procedure and the associated user ID are required for a

software component availability test.

The Examiner respectfully refers the Applicants to the Examiner's that states that

the cited particular columns and line numbers in the references as applied to the claims

are for the convenience of the Applicants. Although the specified citations are

representative of the teachings of the art and are applied to the specific limitations

within the individual claim, other passages and figures may apply as well. It is

respectfully requested from the Applicants in preparing responses, to fully consider the

references in entirety as potentially teaching all or part of the claimed invention, as well

as the context of the passage as taught by the prior art or disclosed by the Examiner.

Conclusion

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of

time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

7.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Vitali Korobov whose telephone number is 571-272-

7506. The examiner can normally be reached on Mon-Friday 8a.m. - 4:30p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571)272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vitali Korobov
Examiner
Art Unit 2155

10/15/2006
VAK

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SUPERVISORY PATENT EXAMINER